

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL MYERS)	
Claimant)	
VS.)	
)	
DESIGN FORUM, INC.)	Docket No. 198,736
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing Order of April 23, 1998, denying claimant medical treatment, and finding claimant's current medical expenses unrelated to his employment.

ISSUES

Whether the claimant is entitled to medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant appealed his entitlement to ongoing medical treatment. Under K.S.A. 1997 Supp. 44-534a, this is a nonjurisdictional issue as administrative law judges are granted the authority to decide issues dealing with medical treatment at preliminary hearing. However, a review of the briefs in this matter indicates the true issue is whether claimant's 1997 incident is a direct and natural result of the 1993 accident or whether claimant has suffered an intervening accidental injury. The issue is therefore whether claimant suffered accidental injury arising out of and in the course of his employment necessitating the current need for medical treatment. This issue is jurisdictional under K.S.A. 1997 Supp. 44-534a and will be considered by the Appeals Board.

Claimant initially injured his low back in 1990. He then alleged an aggravation of this preexisting condition on July 30, 1993, while working for respondent. Claimant underwent an L5-S1 discectomy by Dr. Craig H. Yorke on January 14, 1994, and obtained significant relief. Claimant testified that from the 1994 surgery through December 1997, his back was very much improved and he was experiencing practically no symptoms.

Claimant settled his workers' compensation claim against Design Forum, Inc., and its insurance carrier by way of settlement hearing on June 25, 1997, with future medical being left open.

Claimant last worked for respondent in October 1994 at which time he quit respondent and began working for his current employer, the V. A. Hospital.

On December 2, 1997, claimant suffered a severe pain in his low back as he arose from a chair at home and bent over.

The issue before the Appeals Board is whether claimant's 1997 injury is a direct and natural result of the 1993 accidental injury or whether this is a new and intervening accident suffered at claimant's home. This question was put to Dr. Craig Yorke, the original treating physician, who also had the opportunity to examine claimant after the 1997 incident. When asked the cause of claimant's current back complaints, Dr. Yorke answered in his letter of April 21, 1998, that he believed the cause of Mr. Myers' current back complaints is the injury which occurred in December 1997. When asked whether claimant's current need for medical treatment is the result of the 1993 injury, Dr. Yorke responded that the connection between the 1997 problem and the 1993 injury is "indirect at best".

The medical opinion of Dr. Yorke is uncontradicted. It is further supported by claimant's own testimony wherein he acknowledges that after the surgery he had very little difficulty, experiencing only occasional backaches now and then.

After reviewing the evidence, the Appeals Board finds that the December 2, 1997 incident suffered by claimant while exiting a chair at his home is not a direct and natural result of the 1993 injury but is instead a new and separate intervening injury with little or no connection to his 1993 problems.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated April 23, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: Seth G. Valerius, Topeka, KS
Anton C. Andersen, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director